

EXHIBIT A

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DEFENDANT ORACLE
AMERICA, INC.'S AMENDED &
SUPPLEMENTAL RESPONSES
AND OBJECTIONS TO FIRST
SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS**

PROPOUNDING PARTY: Plaintiff OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED STATES
DEPARTMENT OF LABOR

RESPONDING PARTY: Defendant ORACLE AMERICA, INC.

SET NO.: One

On March 7, 2017, Defendant Oracle America, Inc. ("Oracle") served its Responses ("Initial Responses") to Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor's ("OFCCP") First Set of Requests for Production of Documents ("Requests"). Pursuant to Federal Rule of Civil Procedure 26(e)(1), Oracle amends and supplements its Initial Responses as follows:

PRELIMINARY STATEMENT

Oracle has not completed its investigation of the facts related to this case and therefore its responses are of a preliminary nature. Further discovery, investigation, and research may bring to light additional relevant facts that may lead to changes in the responses set forth below. Although these responses are complete to the best of Oracle's knowledge at this time, these responses are given without prejudice to Oracle's right to amend its objections and responses or to produce additional relevant evidence that may come to light regarding the issues raised in this lawsuit. Nothing contained in these responses shall in any way limit Oracle's ability to make all

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uses at trial or otherwise of the information or documents referenced herein or of any subsequently discovered information or documents or of information or documents omitted from these responses as a result of good faith oversight, error, or mistake.

Oracle has participated in seven good faith meet and confer calls with OFCCP spanning over fifteen hours as well as an exchange of several meet and confer letters since May 18, 2017. As a result of the aforementioned meet and confer efforts, Oracle has gained insights and clarifications that merit amending and supplementing its responses as set forth herein.

In its Notice of Violation ("NOV") dated March 11, 2016, OFCCP expressly stated that its investigation and findings related to hiring and recruiting for "Professional Technical 1, Individual Contributor ('PT1') roles" at Oracle's Redwood Shores, CA, location. However, in its Amended Complaint, which is based on that same NOV, OFCCP stated that its hiring and recruiting claims apply to "positions in the [PT1] job group *and Product Development line of business* (or job function at Oracle Redwood Shores)." Amended Complaint ¶ 10 (emphasis added). Oracle has taken the position that OFCCP's Amended Complaint thereby limited the relevant job positions for the purposes of OFCCP's hiring and recruiting claims to Product Development positions within the PT1 job group at Oracle's Redwood Shores, CA, location. OFCCP contends—despite the narrower focus of its NOV—that its hiring and recruiting claims now extend to both PT1 positions and to all positions in Product Development generally. In the spirit of compromise and in the interest of interpreting OFCCP's Amended Complaint in accordance with the NOV upon which it is based, Oracle's responses and productions responsive to the document requests related to OFCCP's recruiting and hiring claims are limited to the PT1 job group at Oracle's Redwood Shores, CA, location. For the reasons set forth in Oracle's Answer, Oracle's responses and productions responsive to the document requests related to OFCCP's compensation claims are limited to positions in the Product Development, Support, and Information Technology job functions at Oracle's Redwood Shores, CA, location.

While Oracle maintains its objection that its production should be limited to responsive

documents from the period of January 1, 2013 through June 30, 2014 for Requests related to OFFCP's hiring claims, and January 1, 2013 through December 31, 2014 for Requests related to OFCCP's compensation claims, Oracle acknowledges that, as of this date, the issue of the relevant time period is currently pending before Judge Larsen, and that Judge Larsen's decision regarding the relevant time period at issue in the Amended Complaint ("ALJ Relevant Period") will govern its discovery obligations.

To the extent that OFCCP's requests seek "all documents," and "all communications" related to a broadly-defined topic, category, or custodian, it is well-established that requests of this type are inherently overbroad. "Rule 34(b) requires the requesting party to describe the items to be produced with 'reasonable particularity.'" *Life Alert Emergency Response, Inc. v. Connect America.com LLC*, No. CV-13-3455, 2015 WL 12765465, at *7 (C.D. Cal. Jan. 23, 2015). "Sweeping requests for 'all documents' that may encompass swaths of both relevant and irrelevant documents do not satisfy Rule 34's 'reasonable particularity' standard." *Id.* (citations omitted); *see also Regan-Touhy v. Walgreen Co.*, 526 F.3d 641, 649 (10th Cir. 2008) (quoting Manual for Complex Litigation for the proposition that courts should "forbid sweeping requests" and "direct counsel to frame requests for production of the fewest documents possible"); Similarly, "all-encompassing requests for 'all communications' between [defendants] are overbroad." *Life Alert*, 2015 WL 12765465, at *7; *see also Regan-Touhy*, 526 F.3d at 649 ("[T]he burdens and costs associated with electronic discovery, such as those seeking 'all email,' are by now well known, and district courts are properly encouraged to weigh the expected benefits and burdens posed by particular discovery requests.").

The burden of justifying such broad requests falls on OFCCP, which, over the course of repeated meet and confer conversations, has failed to explain how many of these requests are reasonably framed to obtain relevant documents and do not place obligations on Oracle that are disproportionate to the needs of the case. *See Gilead Sciences, Inc. v. Merck & Co.*, No. 5:13-cv-04057, 2016 WL 146574, at *1 (N.D. Cal. Jan. 13, 2016) ("a party seeking discovery of relevant,

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non-privileged information must show, before anything else, that the discovery sought is proportional to the needs of the case"). OFCCP's failure to tailor many of these requests or specify the documents they hope to obtain is especially glaring in light of OFCCP's NOV, which explains that OFCCP previously obtained and "reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; [] conducted an onsite inspection of the worksite[;]" and reviewed and analyzed Oracle's own "hiring data and appropriate workforce availability statistics" as part of its 18-month compliance review. NOV at 2-5. During those 18 months, OFCCP also had access to personnel records and relied on these records in making its discrimination findings. Accordingly, by OFCCP's affirmative admissions, it has already collected massive amounts of material, including many of the records it now seeks here, from Oracle—material that OFCCP found adequate to support its findings in the NOV and its Amended Complaint in this action. And while OFCCP has identified certain materials that Oracle allegedly refused to provide during the compliance review process, OFCCP's multiple burdensome requests for "all documents" and "all communications" related to a broad array of subjects extend well beyond the materials identified in the NOV and Amended Complaint. For these reasons, Oracle maintains below many of the objections that it raised in its Initial Requests on the basis of undue burden, overbreadth, and disproportionality.

These responses are made solely for purposes of this action, and are subject to all objections as to competence, authenticity, relevance, materiality, propriety, admissibility, and any and all other objections and grounds that would or could require or permit the exclusion of any document or statement therein from evidence, all of which objections and grounds are reserved and may be interposed at the time of trial.

No incidental or implied admissions are intended by these responses. The fact that Oracle has responded or objected to any request or part thereof shall not be deemed an admission that Oracle accepts or admits the existence of any facts set forth or assumed by such request.

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Nor shall Oracle's responses or objections be deemed an admission that any statement or characterization in any request is accurate or complete, or that any particular document exists, is relevant, or is admissible in evidence.

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OBJECTIONS TO SPECIFIC DEFINITIONS

DEFINITION NO. 1. "YOU" and "YOUR" mean Oracle America, Inc. and all of its agents, representatives, attorneys, consultants, successors, subsidiaries, or divisions.

OBJECTION TO DEFINITION NO. 1:

Due to OFCCP's lack of clarification or limitation of this term, Oracle objects to the OFCCP's definitions of "YOU" and "YOUR" as vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case, to the extent that these terms include Oracle's agents, representatives, attorneys, consultants, successors, subsidiaries, or divisions. Oracle further objects to this definition to the extent it includes information protected by attorney-client privilege, the attorney work product doctrine, or calls for a legal conclusion as to the relationship between Oracle and other entities, including agents. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Accordingly, and in light of OFCCP's Instruction No. 1, which provides "Unless otherwise stated, these requests relate to Oracle's POLICIES, PRACTICES, or PROCEDURES that apply at its headquarters located at Redwood Shores, California", Oracle's responses, objections, and productions are limited to documents "relate[d] to Oracle's POLICIES, PRACTICES, or PROCEDURES that apply at its headquarters located at Redwood Shores, California."

DEFINITION NO. 2. "RELEVANT TIME PERIOD" means January 1, 2013 to the present unless otherwise stated.

OBJECTION TO DEFINITION NO. 2:

Oracle objects to this definition as including the term "present," which renders the phrase vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. As noted above, Oracle maintains that its responses, objections and productions should be limited to the

relevant periods of January 1, 2013 through June 30, 2014 for Requests related to OFCCP's hiring claims and January 1, 2013 through December 31, 2014 for Requests related to OFCCP's compensation claims. Nevertheless, while preserving and maintaining its objections, Oracle will act in compliance with Judge Larsen's applicable ruling on the relevant period.

DEFINITION NO. 3. "AFFINITY GROUP" means any group of people linked by a common interest or purpose and includes, but is not limited to, gender or race.

OBJECTION TO DEFINITION NO. 3:

Due to OFCCP's lack of clarification or limitation of this term, Oracle maintains its objection to this definition as including the phrases "any group," "linked," and "common interest or purpose," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the OFCCP's allegations pertaining to Oracle's Redwood Shores, CA, location.

DEFINITION NO. 4. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

DEFINITION NO. 5. "ANSWER" means the Answer to the Amended Complaint filed by YOU in this action on February 8, 2017.

DEFINITION NO. 6. "COLLEGE RECRUIT" means any PERSON who expresses interest or applies to YOU through YOUR college recruiting program (including undergraduate students, graduate students, and recent graduates) for technical positions (as opposed to sales positions), including positions in the Professional Technical I, Individual Contributor job group or Product Development, Support, or Information Technology lines of business.

OBJECTION TO DEFINITION NO. 6:

Due to OFCCP's lack of clarification or limitation of this term, Oracle maintains its objection to this definition as including the term "PERSON" and the phrases "expresses

interest," "college recruiting program," and "technical positions," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA location.

DEFINITION NO. 7. "COMMUNICATIONS" means all transactions or transfers of information of any kind, whether orally, in writing, or in any other manner, at any time or place, under any circumstances whatsoever.

OBJECTION TO DEFINITION NO. 7:

Due to OFCCP's lack of clarification or limitation of this term, Oracle maintains its objection to this definition as including the phrase "all transactions or transfers" and the term "orally," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Oracle's responses, objections and production are limited to existing written or electronically stored information in the custody, control, and possession of Oracle America, Inc. and related to its Redwood Shores, CA, location.

DEFINITION NO. 8. "COMPENSATION" means any payments made to, or on behalf of, an employee as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, commissions, bonuses, vacation and holiday pay, retirement and other benefits, stock options and awards, and profit sharing.

OBJECTION TO DEFINITION NO. 8:

Due to OFCCP's lack of clarification or limitation of this term, Oracle maintains its objection to this definition as including the phrase "remuneration for employment," which renders the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and

encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Oracle's responses, objections and production are limited to documents in the custody, control, and possession of Oracle America, Inc. and related to its Redwood Shores, CA, location.

DEFINITION NO. 9. "COMPLIANCE REVIEW" means OFCCP's compliance evaluation of YOUR headquarters located at Redwood Shores, California in connection with the scheduling letter OFCCP sent to YOU on or about September 24, 2014 pursuant to 41 C.F.R. Chapter 60: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, unless otherwise stated.

OBJECTION TO DEFINITION NO. 9 (WITHDRAWN):

Based on OFCCP's clarifications during the meet and confer process, Oracle withdraws its prior objections to Definition No. 9.

DEFINITION NO. 10. "DOCUMENT" means all writings of any kind, including any written, printed, typed, electronically stored, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in YOUR possession and/or control or known by YOU to exist, and also means all copies of documents by whatever means made, including, but not limited to: papers, letters, correspondence, emails, text messages, presentations, manuals, computerized files, computerized spreadsheets, telegrams, interoffice communications, memoranda, notes, notations, notebooks, reports, records, accounting books or records, schedules, tables, charts, transcripts, publications, scrapbooks, diaries, and any drafts, revisions, or amendments of the above, and all other materials enumerated in the definition provided in Rule 34 of the Federal Rules of Civil Procedure.

OBJECTION TO DEFINITION NO. 10:

Oracle maintains its objection to this definition as including the phrase "or known by YOU to exist," which, to the extent such documents are not in Oracle's possession, custody, or control, encompasses documents beyond those that Oracle has any obligation to produce.

DEFINITION NO. 11. "HIRING" or "HIRE" mean receiving expressions of interest, soliciting, recruiting, communicating with, screening, interviewing, evaluating, determining starting salary and other COMPENSATION for, and/or extending offers to, PERSONS who express interest in a position with YOU or requisition posted by YOU.

OBJECTION TO DEFINITION NO. 11:

Due to OFCCP's lack of clarification of limitation, Oracle maintains its objection to this definition as unintelligible in its entirety. Oracle further objects to this definition as including the term "PERSON" and the phrases "expressions of interest," "communicating with," and "express interest," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA. Oracle interprets this definition using the commonly understood use of the word "hiring" or "hire."

DEFINITION NO. 12. "OFCCP" means the Office of Federal Contract Compliance Programs, United States Department of Labor.

DEFINITION NO. 13. "OFCCP'S REQUESTS FOR DATA" means all DOCUMENTS and COMMUNICATIONS requested from YOU by OFCCP during the COMPLIANCE REVIEW, whether orally, in writing, or in any other manner.

OBJECTION TO DEFINITION NO. 13:

Due to OFCCP's lack of clarification or limitation, Oracle maintains its objection to this definition as including the term COMMUNICATIONS, which includes the term "orally," and

the phrase "any other manner," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive. During the meet and confer process, Oracle sought clarification from OFCCP as to any limitations on the scope of this definition, which, as written, encompasses documents OFCCP declined to provide. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Oracle's responses, objections and production are limited to existing written or electronically stored information in the custody, control, and possession of Oracle America, Inc. and relating to its Redwood Shores, CA, location.

DEFINITION NO. 14. "ORGANIZATIONAL CHART" means a graphic or written representation of the structure of YOUR business or any portion of YOUR business, which shows the relationships of the positions or jobs (including but not limited to reporting relationships) within each line of business, job function, or any other division or group as YOU have defined them in the normal course of YOUR business operations.

OBJECTION TO DEFINITION NO. 14:

Due to OFCCP's lack of clarification or limitation, Oracle objects to this definition as including the terms "structure," "relationship," and "each," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Oracle's responses, objections and production are limited to responsive documents related to the Product Development, Support, and Information Technology job functions at its Redwood Shores, CA, location.

DEFINITION NO. 15. "PERSON" means without limitation individuals, firms, associations, partnerships, corporations, governmental agencies or offices and employees, and any other entity.

OBJECTION TO DEFINITION NO. 15 (WITHDRAWN):

Based on OFCCP's clarifications during the meet and confer process, Oracle withdraws